

PRESERVATION PROTECTION, AND PROMOTION OF THE
RIGHTS OF NATIVE AMERICANS

MARCH 7 (legislative day, JANUARY 23), 1990.—Ordered to be printed

Mr. INOUE, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 1781]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1781) to establish as the policy of the United States the preservation, protection, and promotion of the rights of Native Americans to use, practice and develop Native American languages, to take such steps to foster such use, practice and development, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of this bill is to establish as the policy of the United States that it is the right of Native Americans, including Indians, Alaska Natives, Native Hawaiians and Native American Pacific Islanders to preserve, practice and develop their indigenous languages. In carrying out this policy the President of the United States is authorized to direct the heads of the appropriate Federal departments, agencies and instrumentalities to evaluate their policies and procedures and assure that they are in compliance with this Act.

BACKGROUND AND NEED

Language is the basis of culture. History, religion, values, feelings, ideas and the way of seeing and interpreting events are expressed and understood through language. When others place meanings and definitions on words that are from a language that is

not their culture, the original meanings of the words and the concepts they represent eventually become lost. When a language is lost or forgotten, the integrity and identity of the group is diminished.

The perpetuation of native languages is thus an integral part in the continued existence of Native American cultures, heritages and identities. Language, like religion and other traditional practices, must be fostered if the culture is to survive.

It was once the unwritten policy of the United States government to reprimand children for speaking their own languages in school. They were made to feel like foreigners in their classrooms, and, worse, in their own homelands. Children were thus rendered incapable of forging a connection between two worlds which seemed so different from one another, yet which would have to be reconciled as it came time to choose future paths.

Yet Native Americans resisted giving up their cultures. The result is that today, some indigenous cultures are still very traditional and intact while others have nearly lost their identities. With the change of policy by the United States government in the 1970's to one of self-determination, Native Americans have been able to begin to reverse the trends that have been so destructive to their cultures. Yet the low socioeconomic and health status of Native Americans underscores the fact that many Native Americans are still lost between two cultures and there are no assurances that native cultures are still not in danger of extinction.

In some states, the policy of prohibiting native languages has been formally repealed. For example, the Hawaii State Legislature passed a resolution in 1987 requesting that the Hawaii State Department of Education establish Hawaiian language medium classes in elementary schools and create pilot Hawaiian language immersion/maintenance programs. Based on this resolution, the Hawaii State Department of Education now allows children to be instructed in the Hawaiian language. While appropriate tests have not yet been developed to test differences between native speaking children and their counterparts in their achievement of academic skills, available testing has shown that Native Hawaiian children schooled in Hawaiian language immersion programs generally speak and understand English at least as well as their non-Hawaiian speaking Native Hawaiian counterparts. Additionally, the Hawaiian speaking children tend to be more outgoing and self-confident than their counterparts, and have higher self-esteem.

The Senate Select Committee on Indian Affairs held a hearing on "Culturally Relevant Early Education Programs" on November 24, 1987. Testimony for this hearing strongly indicated that where children are taught in their own languages by teachers of the same cultural background and who teach in methods appropriate to that culture, the results are that the children are brighter, higher-achieving, and have higher self-esteem than their native counterparts schooled in other environments. For this reason it is additionally important that exceptions be made for teachers who are qualified to teach in native languages yet who do not have federal or state teacher certification. It is often the case that elders are used to teach native languages, which is desirable since many native cultures hold their elders in high esteem.

On another level, there are native groups who share languages with native groups of other nations, such as Eskimos with their Siberian counterparts or Native Hawaiians and their Polynesian counterparts. It is in the interest of the United States to promote the development of international relations through communication between native peoples.

A clear statement of Federal policy is mandatory to help prevent not only the extinction of Native languages but to provide Native Americans with a tool to develop programs that they believe will enrich their children and perpetuate their cultures. This legislation is an acknowledgement that indigenous Americans have a right to practice their cultures and choose their own lifestyles. If native cultures are to survive and if Native Americans are to become full and productive participants in society, whether in a traditional or mainstream society or some combination of the two, then the United States must do all it can to protect and encourage cultural practices.

It is not the intent of this Act to create new Federal programs or to prohibit the teaching or use of the English language to Native Americans. It is important, however, that existing Federal programs are brought into conformity with this Act in order to assure maximum participation of Native Americans with government agencies in fulfilling the mandate of this Act.

This legislation is based on two resolutions adopted at the Eighth Annual International Native American Language Issues Institute, held in June, 1988, in Tempe, Arizona. Institute members requested that the Senate Select Committee on Indian Affairs introduce this legislation and urge its adoption as the policy of the United States.

LEGISLATIVE HISTORY

On October 23, 1989, Senator Inouye introduced S. 1781 for himself and Senators DeConcini, Daschle, Reid, Conrad, Cochran, Matsunaga, Murkowski, McCain and Burdick. The bill was referred to the Select Committee on Indian Affairs for consideration. An amendment in the nature of a substitute to S. 1781 was considered and ordered reported by the Select Committee on Indian Affairs on November 14, 1989.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on November 14, 1989, by unanimous vote and with a quorum present, recommends that the Senate pass S. 1781.

SECTION-BY-SECTION ANALYSIS

Short title

Section 1. Section 1 provides that the Act may be cited as the "Native American Language Act"

Findings

Section 2. Section 2 consists of findings that establish the reasoning and need for the legislation

Section 2(1). Section 2(1) finds that the United States recognizes the unique status of Native American cultures and languages and is responsible for assisting Native Americans in ensuring the survival of their languages and cultures;

Section 2(2). Section 2(2) finds that the United States has accorded Native Americans special status and recognizes their right to exercise cultural and political practices and continue separate identities;

Section 2(3). Section 2(3) finds that the Native American languages are an integral part of traditional culture and are the basic medium for the transmission and thus survival of cultures and the attributes of culture, which include literature, history, religion, political institutions and values;

Section 2(4). Section 2(4) finds that Native American languages are often treated as anachronisms;

Section 2(5). Section 2(5) finds that there is no clear, comprehensive or consistent Federal policy on the treatment of Native American languages, the result of which has been suppression and attempted destruction of these languages and therefore cultures;

Section 2(6). Section 2(6) finds that there is clear evidence that a child's ability to speak his or her native language provides a strong basis for strong academic achievement and performance, community and school pride, and enhanced educational opportunity;

Section 2(7). Section 2(7) finds that it is in the interest of the United States, individual states and territories to actively participate in the encouragement of full academic and human potential achievement of all students and citizens;

Section 2(8). Section 2(8) finds that acts of suppression and destruction of native languages are in conflict with the United States policy of self-determination for Native Americans;

Section 2(9). Section 2(9) finds that languages provide the means of communication for all human experiences and thus are critical to the cultural and political survival of any people;

Section 2(10). Section 2(10) finds that language provides a direct and powerful means of promoting international communication by people who share languages.

Definitions

Section 3. Section 3 sets forth the definitions of terms for the purpose of this Act

Section 3(1). Section 3(1) provides that "Native American" means an Indian, Native Hawaiian, or Native American Pacific Islander.

Section 3(2). Section 3(2) provides that "Indian" is defined as it appears under section 5351(4) of the Indian Education Act of 1988. This definition states that the term "Indian" means any individual who is a member of an Indian tribe, band, or other organized group of Indians (as defined by the Indian tribe, band, or other organized group), including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the state in which they reside; a descendent, in the first or second degree, of such an individual; considered by the Secretary of the Interior to be an Indian for any purpose; an Eskimo, Aleut, or other Alaska Native; or is determined to be an Indian under regulations promulgated by the Secretary after consultation with the National Advisory Council on Indian Education.

Section 3(3). Section 3(3) Provides that "Native Hawaiian" is defined as it appears under section 4009 of P.L. 100-297. This definition states that the term "Native Hawaiian" means any individual who is a citizen of the United States; a resident of the State of Hawaii, and a descendent of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by genealogical records, Kupuna (elders) or Kama'aina (long-term community residents) verification, or birth records of the State of Hawaii.

Section 3(4). Section 3(4) provides that "Native American Pacific Islander" means any descendent of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

Section 3(5). Section 3(5) provides that "Indian tribe" and "tribal organization" are defined as they appear under section 4 of the Indian Self-Determination and Education Assistance Act. This definition states that "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claim Settlement Act [43 U.S.C.A. 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. This definition next states that "tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be prerequisite to the letting or making of such contract or grant.

Section 3(6). Section 3(6) provides that "Native American language" means the historical, traditional languages spoken by Native Americans.

Section 3(7). Section 3(7) provides that "Traditional leaders" means Native Americans who have special expertise in Native American culture and Native American languages.

Section 3(8). Section 3(8) provides that "Indian reservation" is defined as it appears under section 3 of the Indian Financing Act of

1974. This definition states that "reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporation under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C.A. SS 1601 et seq.].

Declaration of policy

Section 4. Section 4 provides a declaration of policy of the United States

Section 4(1). Section 4(1) provides that it is the policy of the United States to preserve, protect and promote the rights of Native Americans to use, practice and develop their languages.

Section 4(2). Section 4(2) provides that it is the policy of the United States to allow exceptions to teacher certification requirements for Federal programs and programs funded in part or in whole by the Federal government for instruction in Native American languages and to encourage state and territorial governments to make similar exceptions.

Section 4(3). Section 4(3) provides that it is the policy of the United States to encourage and support the use of Native American languages as a medium of instruction.

Section 4(3)(A). Section 4(3)(A) provides that it is the policy of the United States to encourage and support the use of Native American languages as a medium of instruction to encourage and support Native American language survival.

Section 4(3)(B). Section 4(3)(B) provides that it is the policy of the United States to encourage and support the use of Native American languages as a medium of instruction to encourage and support educational opportunity.

Section 4(3)(C). Section 4(3)(C) provides that it is the policy of the United States to encourage and support the use of Native American languages as a medium of instruction to encourage and support increased student success and performance.

Section 4(3)(D). Section 4(3)(D) provides that it is the policy of the United States to encourage and support the use of Native American languages as a medium of instruction to encourage and support increased student awareness and knowledge of their culture and history.

Section 4(3)(E). Section 4(3)(E) provides that it is the policy of the United States to encourage and support the use of Native American languages as a medium of instruction to encourage and support increased student and community pride.

Section 4(4). Section 4(4) provides that it is the policy of the United States to encourage state and local education programs to work with Native American parents, educators, Indian tribes, and other Native American governing bodies in the implementation of programs to put this language policy into effect.

Section 4(5). Section 4(5) provides that it is the policy of the United States to recognize the right of Indian tribes and other Native American governing bodies to use Native American languages as a medium of instruction in all schools funded by the Secretary of the Interior.

Section 4(6). Section 4(6) provides that it is the policy of the United States to fully recognize the inherent right of Indian tribes and other Native American governing bodies, states, territories and possessions of the United States to take action on and give official status to their Native American languages for the purpose of conducting their own business.

Section 4(7). Section 4(7) provides that it is the policy of the United States to support the granting of comparable proficiency achieved through course work in a Native American language the same academic credit as comparable proficiency achieved through course work in a foreign language, including recognition of such proficiency by institutions of higher education as fulfilling foreign language entrance or degree requirements.

Section 4(8). Section 4(8) provides that it is the policy of the United States to encourage all institutions of elementary, secondary and higher education to include, where appropriate, Native American languages in the curriculum in the same manner as foreign languages and to grant proficiency in Native American languages the same full academic credit as proficiency in foreign languages.

No restrictions

Section 5

Section 5 provides that the right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including in publicly supported education programs.

Evaluations

Section 6(a). Section 6(a) provides that the President shall direct the heads of various Federal departments, agencies, and instrumentalities to carry out the following activities

Section 6(a)(1). Section 6(a) (1) provides that the President shall direct the heads of various Federal departments, agencies, and instrumentalities to evaluate their policies and procedures in consultation with Indian tribes and other Native American governing bodies as well as traditional leaders and educators in order to determine and implement changes needed to bring the policies and procedures into compliance with the provisions of this Act.

Section 6(a)(2). Section 6(a) (2) provides that the President shall direct the heads of various Federal departments, agencies, and instrumentalities to give the greatest effect possible in making such evaluations to the policies and procedures which will give the broadest effect to the provisions of this Act, unless there is a specific Federal statutory requirement to the contrary.

Section 6(b). Section 6(b) provides that by no later than the date that is one year after the date of enactment of this Act, the President shall submit to the Congress a report containing recommendations for amendments to Federal laws that are needed to bring such laws into compliance with the provisions of this Act.

Use of English

Section 7

Section 7 provides that nothing in this Act shall be construed as precluding the use of Federal funds to teach English to Native Americans.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1781 as provided by the Congressional Budget Office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 9, 1990.

Hon. DANIEL K. INOUE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1781, the Native American Language Act, as ordered reported by the Senate Select Committee on Indian Affairs, November 14, 1989. CBO estimates that enactment of this bill would result in no significant cost to the federal government or to state and local governments.

S. 1781 would enact an explicit federal policy on Native American languages. The policy would recognize and protect the right of Native Americans to use their languages and to adopt them as official languages for the purpose of conducting their business, encourage instruction in and use of Native languages in schools, and encourage the development of Native language curricula. States, territories and possessions would be prohibited from passing laws prohibiting the use of Native American languages in certain instances, and federal agencies would be directed to bring their policies and procedures into compliance with the act.

This bill would impose some costs on federal agencies, as they would be required to evaluate existing policies with regard to Native languages and to recommend and implement any necessary changes. However, no additional funds would be authorized for this purpose and CBO does not anticipate that the costs would be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the provisions of the bill.

The Committee believes that S. 1781 will have a minimal impact on regulatory paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received the following communication from the Department of the Interior on S. 1781.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, November 8, 1989.

HON. DANIEL K. INOUE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1781, the "Native American Language Act."

While we support the promotion of Native American languages, we strongly oppose S. 1781 as drafted. We would be willing to work with the Committee to draft legislation that would address our concerns.

S. 1781 would establish as the policy of the United States the preservation, protection and promotion of the rights of Native Americans to speak, practice, and develop Native American languages and to foster the use and practice of these languages. This policy would be implemented through three means:

States, territories and possessions would be forbidden from establishing laws that prohibit the use of a Native American language in any area where such a language is spoken, or in any area within the boundaries of a present or former Indian reservation.

The President would be required to direct the heads of the various Federal departments, agencies, and other Federal instrumentalities to evaluate their policies and procedures in consultation with Indian tribes and other Native American governing bodies to: (1) determine what changes are needed to comply with the policy established by this legislation; (2) give the greatest effect possible (absent clear Federal statutory requirements to the contrary) to those policies which would "give the broadest effect to the provisions of this Act"; and (3) evaluate the laws that they administer and make recommendations on amendments needed to bring these laws into compliance with this legislation.

Within one year after enactment of this legislation, the Secretary of the Interior (the Secretary) would be required to make changes in the programs of all schools operated by the Bureau of Indian Affairs (the Bureau), in cooperation with Indian tribes and other Native American governing bodies, to incorporate Native American language programs.

We have several concerns with the bill as drafted. First, the requirement that Bureau schools implement Native American language programs is a very complex process, and could not be implemented within the one-year time frame that would be required by the bill, if it could be implemented at all. Even though many tribes have developed their written language to a point where curriculum materials and textbooks are available for immediate use, for many other tribes such materials are not available. Therefore, it would take considerable time to develop such instructional material.

In addition, for many of the Bureau-run schools, more than one tribe and/or tribal language are represented. For example, the

Sherman School located in Riverside, California, has more than 70 different tribes represented in its student body in the current school year.

Finally, aside from the difficulties of implementing this program within the time allotted, this language program would be very expensive to administer. We estimate that the cost to implement this program would approach \$20 million. Limited funding should be directed toward providing Indian students with the basic skills needed to compete with their counterparts in public schools. Redirected funding from the basic educational mission of Bureau-operated schools will not improve the achievement levels of students most in need of assistance.

Second, we strongly object to making this bill, with its policies on language, applicable to the territories or possessions of the United States in the Pacific. These policies should not be imposed on the respective territories where, under self-government, the indigenous peoples on their own now establish policies regarding the teaching of languages. It would be neither appropriate nor appreciated by the Pacific Insular areas to require the Department to speak for insular governments concerning language. To include the territories in this bill would usurp the self-government prerogative of the indigenous Americans in the U.S. Pacific Insular areas.

Finally, any legislation of this kind must ensure that the Native American language does not supplant English, as the main language. After they receive their education, these Indian students must be able to compete outside their reservation if economic development is to occur in Indian country. This bill should emphasize this priority.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WALTER R. MILLS,
Acting Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 1781 will not effect any changes in existing law.

